

IDAHO BOARD OF CHIROPRACTIC PHYSICIANS
Bureau of Occupational Licenses
700 West State Street, P.O. Box 83720
Boise, ID 83720-0063

Conference Call Minutes of 7/17/2015

BOARD MEMBERS PRESENT: Mary Jo White, D.C. - Chair
Kathleen Joann McKay, D.C.
Michael Troy Henze, D.C.
Charles H. Coiner
John Downey, D.C.

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Lori Peel, Investigative Unit Manager
Maurie Ellsworth, General Counsel
Jean Uranga, Board Prosecutor
Roger Hales, Naylor & Hales

OTHERS PRESENT: Ryan Fitzgerald, Idaho Chiropractic Association
Tony Smith, Eiguren & Ellis

The meeting was called to order at 1:01 PM MDT by Mary Jo White, D.C.

APPROVAL OF MINUTES

Dr. Downey made a motion to approve the minutes of 2-13-2015. It was seconded by Dr. McKay. Motion carried. Dr. Henze made a motion to approve the minutes of 2-20-2015. It was seconded by Dr. Downey. Dr. Downey made a motion to revise the minutes of 3-24-2015 to state that the meeting was a conference call and approve the revised minutes. It was seconded by Dr. McKay. Motion carried. Dr. Downey made a motion to approve the minutes of 5-1-2015. It was seconded by Mr. Coiner. Motion carried. Dr. Downey made a motion to approve the minutes of 5-29-2015. It was seconded by Mr. Coiner. Motion carried. Dr. Downey made a motion to approve the minutes of 6-12-2015. It was seconded by Dr. McKay. Motion carried.

LEGISLATIVE REPORT

Ms. Cory gave the legislative report. She reviewed the procedures and deadlines for proposed laws and rules.

MEDIA ARTICLE

Ms. Cory addressed the media article that recently appeared in *The Idaho Statesman* about a particular chiropractor's practice. Dr. White asked about the comments that the Bureau has received after this article was released. Ms. Cory stated that the Bureau did not receive any further comments. She also discussed the second article that appeared in *The Idaho Statesman*. Dr. McKay requested that a hard copy of the article be mailed to her.

FINANCIAL REPORT

Ms. Hall gave the financial report, which indicated that the Board had a negative cash balance of (\$16,310.72) as of 6-30-2015.

FY2016 BOARD CONTRACT

Ms. Hall reviewed the FY2016 Board Contract. Dr. McKay moved to approve the contract and authorize Dr. White to sign it. It was seconded by Dr. Henze. Motion carried.

DISCIPLINE

Ms. Uranga presented a memorandum regarding case number CHI-2014-9. After discussion, the Board gave recommendations for appropriate discipline.

INVESTIGATIVE REPORT

Ms. Peel gave the investigative report, which is linked above.

OLD BUSINESS

To Do List – The Board reviewed the to do list and no action was taken.

PROPOSED LAW/RULE 020

Mr. Hales reviewed the process of writing the proposed additional language to revise Idaho Code § 54-704 and the proposed language for Rule 020. He said the Board requested a follow-up meeting be held to have further discussions with Representative Wood. The follow-up meeting was held on July 16, 2015, and included Dr. White, Representative Wood, Mr. Hales, Ms. Cory, Mr. Ellsworth, and Berk Fraser, R.Ph., Deputy Executive Director of the Board of Pharmacy. They discussed the proposed law change which will modernize the prohibition in Idaho

Code § 54-704 (2) (b) to conform to the definition in Idaho Code § 54-1705 (37). The proposed language is as follows:

54-704 (2) (b) Prescribe, dispense, independently administer, distribute, ~~Direct or suggest to the a patient that such patient shall use a~~ drug, substance ~~or product which that,~~ under federal law is required, prior to being dispensed or delivered, to be labeled with ~~either any~~ of the following statements: (i) "Caution: Federal Law Prohibits Dispensing Without Prescription"; ~~or (ii)~~ "Rx only"; (iii) (iii) "Caution: Federal Law Restricts This Drug To Use By or On The Order Of A Licensed Veterinarian"; or ~~(iii)(iv) is a~~ drug, substance or product which is required by any applicable federal or state law or regulation to be dispensed on prescription drug order only or is restricted to use by practitioners only.

The group also reviewed the changes to Rule 020. This language which was reviewed by the Board at its last meeting was also acceptable to Representative Wood. He suggested the Board consider adding additional language to Rule 020 to point back to the law so the rule is clear and enforceable. The additional language would say: "nothing herein shall allow for deviation from the prohibition set forth in Idaho Code § 54-704 (2)."

The Board needs to have the rule change submitted by the third week of August, and the law change submitted by August 1.

Dr. White expressed her concern regarding the definition of legend versus prescription versus over-the-counter drugs, particularly the definition of legend drugs. She requested a clean copy of the proposed law and rule with all the strikeouts/underlines removed be sent to the Board to show how it would look; Ms. Cory explained that the law and rule would be submitted to the Governor's Office as shown on the documents distributed today. Mr. Coiner asked if the rest of the statute was reviewed to ensure all language was brought up to date. Mr. Hales stated this was not done due to the timing factors. Dr. White stated that there was a discussion regarding this during the June 12, 2015 meeting, and that it will be reviewed more thoroughly at a later time. Mr. Coiner suggested that the Board discuss this again with Representative Wood and see if Legislative Services could also provide assistance in re-writing the law to remove antiquated language. Ms. Cory said that there had been a brief review of the related laws and rules and a small change was made, but an extensive review has not been completed. She also said that Legislative Services has a different timeline for legislators than it does for the Bureau to submit changes. Mr. Coiner also pointed back to Rule 020 and stated that it needs to have an addendum that will clarify the redundancy. Mr. Hales stated the addition to Rule 020: "nothing herein shall allow for deviation from the prohibition set forth in Idaho Code § 54-704 (2)." This will clarify that what is allowed under the rule is confined by the law. Dr. Downey made a motion to adopt and approve the law and rule language and submit it to the Governor's Office and the Legislature at the appropriate time. Mr. Coiner seconded the motion. There was further discussion and Dr. Henze suggested additions in the

language (i.e. adding the word “chiropractor” after “physician” and adding “medical” before “practitioners”). Mr. Hales addressed the suggestion of the addition of the word “chiropractor” and stated that the Chiropractic Practice Act defines the term physician as chiropractors. Mr. Hales said that if the Board adds additional terms as suggested, it might cause further issues; these types of changes would cause confusion in accordance with the definitions already used in Idaho Code § 54-703. Mr. Hales said that the definition of a legend or prescriptive drug is set forth in the Pharmacy Act in Idaho Code § 54-1705 (37). Motion carried. Dr. McKay made a motion to have Dr. White and interested parties continue working on submitting the legislative changes to the Governor’s Office, Legislative Services and the Bureau. It was seconded by Dr. Henze. Motion carried.

Mr. Fitzgerald with the Idaho Association of Chiropractic Physicians (IACP) addressed the Board regarding the proposed language to modernize the law and rule. He said the IACP met with Chairman Wood about the law and rule changes, and is also reviewing curriculum being taught at various schools regarding prescription drugs. The IACP does not have a presentation at this time.

TEMPORARY PERMIT

Dr. White requested that this item be included on the next agenda so she will have time to research the timing of the four parts of the national test. She asked Ms. Toncray to send her a copy of the temporary permit form via email.

NEW BUSINESS

FEDERATION OF CHIROPRACTIC LICENSING BOARDS (FCLB) DISTRICT MEETING, OCTOBER 2015

Dr. White suggested that the next Board meeting be held in conjunction with the FCLB District meeting from October 1-4, 2015. She outlined many of the issues that would be on this year’s agenda, and strongly recommended all Board members attend. Dr. McKay attended the last FCLB meeting and would also like to attend this one. Dr. Henze made a motion to cover the reasonable expenses for all Board members to attend the FCLB District Meeting in Coeur d’Alene, Idaho in October 2015. Dr. McKay seconded the motion. Motion carried. Mr. Coiner made a motion for Ms. Toncray to attend the FCLB District meeting. Dr. Downey seconded the motion. Motion carried.

CORRESPONDENCE

IDAHO STATE BOARD OF MEDICINE

The Board reviewed a question regarding chiropractors licensed in Idaho being allowed to order Computed Tomography Scans (CTs) and Magnetic Resonance Images (MRIs), and agreed that they are authorized to do this. The Board directed Ms. Toncray to respond to the email.

FCLB DRY NEEDLING POWER POLL

The Board reviewed the request and provided the responses for Ms. Toncray to submit. Dr. White reminded the Board that Idaho can also request power polls.

BOARD MEETING PREPARATION

Mr. Coiner suggested that the meeting materials have a cut-off date of a week prior to the meeting: gather all the materials, and send in a 'book' within the email for better organization. He suggested that the Bureau state on the agenda that any request to the Board must be submitted seven (7) days prior to the meeting. The Board agreed with this suggestion for better organization prior to Board meetings.

PEER REVIEW PROCESS

Mr. Ellsworth reviewed the peer review process and discussed the purpose of it in accordance with the laws and rules (Idaho Code § 54-715 and Rule 600). He said the laws of the peer review process have been in place since 1996. He said its process has expanded from the original intent providing parties a procedure to obtain review of matters relative to the appropriateness, quality, utilization, and cost of chiropractic care to more of a complaint/hearing process. Mr. Ellsworth suggested the process be re-examined and the Board should decide whether it wants to abolish or revise these laws and rules.

Dr. White asked if it was possible to make this process more efficient, and asked Mr. Ellsworth if it was different than what a pro reviewer accomplishes. Mr. Ellsworth said that peer review is chiropractic peers reviewing allegations and/or questions raised about a doctor and his practices. He said that the Idaho Board of Nursing has an extensive peer review process that has a goal of improving the practice of the practitioner. Mr. Ellsworth stated that the question to ask is: What are your objectives and the simplest way to achieve them? The current peer review process is not simple and the objectives are not clear. Dr. Henze asked if there was a way to utilize peer review rather than pro reviewers on investigative cases. Mr. Ellsworth said it could be revised although pro reviewers are paid for their services where peer reviewers are not paid, so using the board of three peer reviewers as pro reviewers could triple the cost of reviews. Dr. White reminded the Board that pro reviewers to an extent set the standard of care through the Board. Mr. Coiner requested that the statute and rule be sent to the Board and put the peer review process on the agenda for the next meeting. Mr. Ellsworth suggested that Dr. White invite Dr. Mayo, the Chair of the current peer review committee to the next meeting.

CE COURSES

Dr. McKay made a motion to approve the continuing education courses presented. Dr. Henze seconded the motion. Motion carried.

OUM CHIROPRACTIC MOCK TRIAL
IDAHO ASSOCIATION OF CHIROPRACTIC PHYSICIANS
MAGNETIC RESONANCE THERAPY AND CHIROPRACTIC
ONLINE CE PRO / CE4YOU
FASCIAL MOVEMENT TAPING (FMT) LEVEL 1
IDAHO ASSOCIATION OF CHIROPRACTIC PHYSICIANS

Dr. Henze asked about a CE course that was approved in California but then denied by the Idaho Board when submitted. Dr. Henze will forward the information to the Bureau so this can be resolved.

APPLICATION REVIEW

QUESTION REGARDING PHYSIOTHERAPY REQUIREMENT FOR ENDORSEMENT LICENSURE

Mr. Ellsworth presented this letter to the Board. The Board stated that the potential candidate should proceed with the application for Idaho licensure before it makes the decision concerning waiving the physiotherapy requirement for endorsement licensure.

NEXT MEETING will be scheduled for October 2015, in conjunction with the FCLB District Meeting; Dr. White will review the FCLB District Meeting agenda and set the next meeting date and time.

ADJOURNMENT

Dr. Downey made a motion to adjourn the meeting at 3:50 PM. It was seconded by Dr. McKay. Motion carried.

Mary Jo White, D.C., Chair

Kathleen Joann McKay, D.C.

Michael Troy Henze, D.C.

Charles H. Coiner

John Downey, D.C.

Tana Cory, Bureau Chief